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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF PARENT CHILD RELATIONSHIP OF E.S., MINOR CHILD AND HIS MOTHER, KATIE STOREY,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A02-0702-JV-183
MARION COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Viola Taliaferro, Senior Judge
Cause No. 49D09-0602-JT-7557

October 17, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Katie Storey appeals the involuntary termination of her parental rights as to her minor child, E.S. She presents the following restated issues for review:

1. Was the evidence sufficient to establish that there is a reasonable probability that the conditions resulting in E.S.'s removal will not be remedied?

2. Was the evidence sufficient to establish that termination is in the best interests of E.S.?

We affirm.

Katie Storey is the biological mother of Z.S., born August 21, 2002, and E.S., born November 11, 2003.[1] Katie has been diagnosed with paranoid schizophrenia. Katie has a history of hospitalizations and placement in residential treatment for her mental illness. Katie was first hospitalized with regard to her mental condition when she was twelve years old. In 1999, at the age of eighteen, Katie began experiencing hallucinations and delusions or false beliefs, thereby triggering her hospitalization in the Wishard psychiatric unit and treatment with Haldol.[2] Katie was again hospitalized in 2000 and 2002 for similar reasons. In 2002, however, Katie was not treated due to her pregnancy with Z.S. Katie continued to receive outpatient care until 2003 and, since that time, does not appear to have had any psychotic symptoms, other than negative symptoms associated with schizophrenia.[3]

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[1] Mother testified that E.S. was born on November 11, 2003. The trial court's orders and the records of the Marion County Office of Indiana Department of Child Services indicate that E.S. was born on November 12, 2003.

[2] Haldol is often indicated for use in the treatment of schizophrenia. *See* http://www.rxlist.com/cgi/generic/haloper_ids.htm (last visited September 12, 2007).

Katie's involvement with the Marion County Office of Family and Children, now known as the Marion County Office of Indiana Department of Child Services (the MCDCS), began after the birth of Z.S., when the hospital contacted the MCDCS because Katie was having hallucinations and delusions and was unable to care for Z.S. The MCDCS filed a petition alleging Z.S. to be a child in need of services (CHINS). Pursuant to a CHINS determination, Z.S. was removed from Katie when he was six days old because Katie was non-compliant with treatment for her mental health condition and lacked sufficient income and suitable housing. Throughout the CHINS proceedings relating to Z.S., Katie was offered numerous services, including services concerning her mental health condition with which she failed to comply. The matter involving Z.S. eventually moved to the termination of parental rights stage, but was ultimately resolved when Katie executed voluntary consents for her sister to adopt Z.S.

On January 27, 2005, the MCDCS filed a petition alleging E.S. to be a CHINS. In support of the petition, the MCDCS alleged that Katie had recently been involved in a termination of parental rights matter concerning Z.S., that Katie had failed to comply with mental health services in that case that would have allowed Z.S. to return home, and that E.S.'s safety was at risk because of Katie's unstable health status and her non-compliance with mental health services during the CHINS/termination proceedings regarding Z.S. At an initial hearing held that day, Katie denied the allegations in the CHINS petition. E.S. was nevertheless ordered temporarily removed from Katie's care. Katie was directed to turn over E.S. to Youth Emergency Services at five o'clock that

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[3] As explained in the record by a counselor who was assigned to work with Katie, positive symptoms of schizophrenia include hallucinations or delusions. Negative symptoms include blunt affect, restricted emotion, and emotional range.

evening. Katie, however, did not turn over E.S. at the designated time and location and thereafter had no contact with the MCDCS. In May 2005, a default judgment was entered against Katie on the CHINS petition after she failed to appear for the scheduled hearing. Katie and E.S. were eventually located in August 2005, at which time E.S. was removed from Katie's care and placed in a foster home.[4]

After the removal of E.S., the MCDCS assigned a family case manager to Katie in October 2005. Katie was initially ordered to complete a parenting assessment, psychiatric evaluation, home-based counseling, mental health counseling, and a parenting class. Following the parenting assessment, during which Katie informed the counselor that she had used marijuana "on and off" throughout her life, Katie was referred for random drug screening. *Transcript* at 12. Katie completed all of the court-ordered services except for home-based counseling and mental health counseling.

Although referred for services in January 2006, Katie did not participate in home-based counseling services until March 14, 2006, due in part to difficulty in contacting Katie to arrange appointments. In total, Katie missed over half of her required appointments and failed to cooperate with the counselors during the appointments she did attend. Bruce Joray, the home-based counselor assigned to Katie to conduct the therapy portion of home-based counseling, explained that several of Katie's missed appointments were the result of his inability to get in touch with Katie to schedule meetings. During the visits Joray was able to schedule, Katie would not show up or would not cooperate.

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[4] The MCDCS initially planned to leave E.S. in Katie's care through what was referred to as "an in-home CHINS". *Transcript* at 75. The MCDCS, however, changed its plan and decided to place E.S. in foster care after Katie failed to turn E.S. over to Youth Emergency Services at the stated time and then essentially disappeared for six months, failing to return to court for further CHINS proceedings or to comply with ordered services.

Joray testified that during his sessions with Katie, he felt "used" and "deceived" by her and he was of the opinion that Katie was not taking the offered services seriously and was not working with him toward the goal of reunification with E.S. *Id*. at 136, 139. Eventually, it was determined that the therapy portion of home-based counseling was not serving its purpose.

During home-based counseling, it was also determined that Katie's home was not stable or safe for visitation. Concern for safety arose after Katie informed one of her counselors that a man named Carlos had broken into her home and damaged her belongings. Katie further explained to the counselor that Carlos wanted to date her, but she did not want to date him, and that he had stolen a car from her and was angry because she had stolen it back. Katie relayed to the counselor that she feared Carlos would shoot her. Given Katie's lack of cooperation and the concern for safety, home-based counseling was deemed unsuccessful and eventually terminated on May 22, 2006.

With regard to mental health counseling, Katie was initially assessed by Dr. Gina Laite, who performed a psychiatric evaluation in January 2006. Dr. Laite reviewed Katie's history relating to her mental condition and described it as "severe", but acknowledged that Katie's psychotic symptoms appeared to be in remission since 2003. *Id*. at 251. Dr. Laite testified, however, that individuals diagnosed with schizophrenia need fairly constant treatment because although their symptoms may go into remission, they may relapse and their symptoms may return at any time. Of particular concern to Dr. Laite was Katie's denial of her diagnosis of mental illness. Dr. Laite explained that because Katie fails to recognize her mental illness, she is not likely to seek help should

symptoms arise. Dr. Laite's recommendation was that it would be "very prudent" for Katie to continue counseling. *Id*. at 251.

As a result of the psychiatric evaluation in January 2006, Katie was immediately referred for mental health counseling. Katie, however, did not comply with the referral until July 2006, at which time she began counseling with Nancy York. Katie admitted that she began counseling for purposes of the termination proceedings, and further admitted that she would not continue with counseling if not being monitored by the MCDCS. Of the eleven counseling sessions scheduled with York, Katie attended seven. Like Dr. Laite, counselor York expressed concern about Katie's lack of recognition of her mental illness and her disagreement with the diagnosis that she suffers from paranoid schizophrenia. York agreed that Katie needs to continue with mental health counseling.

In addition to the above, the MCDCS also was concerned about the stability of Katie's lifestyle. Specifically, Katie has not had a stable residence, having lived at five different locations in two years time. Although Katie denies a substance abuse problem, she acknowledged that she told one of her counselors that she periodically used marijuana and, the record reveals that during the termination proceedings, Katie was arrested for possession of marijuana after an officer discovered a roach in her waistband. Following her arrest, Katie was given a second referral for random drug screens, but Katie refused to comply. Additionally, several counselors expressed concern about the types of people Katie associated with and noted that she allows inappropriate people into her home. Specifically noted by the counselors was Katie's relationship with Carlos and other men who did not treat her appropriately. On one occasion, police responded to a domestic disturbance between Katie and another individual. Since E.S.'s removal in

August 2005, Katie has been arrested several times, including an arrest for possession of a handgun and possession of marijuana.

Additionally, while several counselors noted that Katie has a good bond with E.S. and that she attended most of her scheduled visitations, there was concern over some of Katie's behaviors during her visits with E.S. During her initial visits, Katie would spend much of the time braiding E.S.'s hair, which she did not want anyone to cut believing it would cause E.S. to have a speech impediment. Although E.S. looked forward to his visits with Katie, he did not want to have his hair braided and would often be so upset by it that he would cry and vomit before and after his visits. Counselors felt it necessary to instruct Katie to limit the amount of time braiding E.S.'s hair to an hour and to use the remainder of the time interacting with E.S.

On February 23, 2006, the MCDCS filed a petition for the involuntary termination of the parent-child relationship between Katie and E.S. Hearings on the petition were held on September 18, 2006, November 29, 2006, and December 13, 2006. On December 29, 2006, the juvenile court entered an order terminating Katie's parental rights to E.S. Katie timely filed a notice of appeal on January 18, 2007.

The Fourteenth Amendment to the U.S. Constitution protects a parent's right to establish a home and raise her child. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143 (Ind. 2005). A parent has a fundamental liberty interest in the care, custody, and control of her child, and the parent-child relationship is "one of the most valued relationships in our culture." *Id.* at 147. Parental interests, however, are not absolute, and are subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. *Bester v. Lake County Office of*

Family & Children, 839 N.E.2d 143. Parental rights, therefore, may be terminated when a parent is unable or unwilling to meet her parental responsibilities. *Id*.

The involuntary termination of parental rights is "the most extreme sanction that a court can impose." *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*, *cert. denied*, 534 U.S. 1161 (2002). Thus, we view termination as an option to be pursued only when all other reasonable efforts have failed. *In re L.S.*, 717 N.E.2d 204. Parental rights are not terminated in order to punish the parents, but rather to protect their children. *Id*. Thus, although parental rights are of constitutional dimension, they may be terminated when the parents cannot or will not fulfill their parental responsibilities. *Id*.

In order to effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the elements set out in Indiana Code Ann. § 31-35-2-4(b)(2) (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007). Specifically, the State must establish:

> (A) one of the following exists:
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> (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
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> (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
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> (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
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> (B) there is a reasonable probability that:
>
> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
>
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
>
> (C) termination is in the best interests of the child; and
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> (D) there is a satisfactory plan for the care and treatment of the child.

The MCDCS bears the burden of proving these allegations by clear and convincing evidence. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143. Clear and convincing evidence need not reveal that "'the continued custody of the parents is wholly inadequate for the child's very survival.'" *Id*. at 148 (*quoting Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1233 (Ind. 1992)). Rather, it is sufficient to show by clear and convincing evidence that "'the child's emotional and physical development are threatened'" by the respondent parent's custody. *Id*. at 148 (*quoting Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d at 1233).

In determining whether sufficient evidence supports the termination of parental rights, we neither reweigh the evidence nor judge the credibility of witnesses. *In re Involuntary Termination of Parent Child Relationship of A.H.*, 832 N.E.2d 563 (Ind. Ct. App. 2005). We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id*. We will not set aside an order terminating parental rights unless it is clearly erroneous. *Id*.

Katie concedes that E.S. has been removed from her care for a sufficient period of time to satisfy the requirements of I.C. § 31-35-2-4(b)(2)(A) and does not challenge the MCDCS's plan for the care and treatment of E.S. under I.C. § 31-35-2-4(b)(2)(D). She argues, however, that the MCDCS failed to present sufficient evidence to support the remaining statutory requirements.

1.

Katie first argues that the evidence is insufficient to show there is a reasonable probability that the conditions for E.S.'s removal will not be remedied. E.S. was removed from Katie's care because of her failure to comply with mental health

counseling in the case concerning Z.S. and "her unstable mental health status". *Appendix* at 11. Katie maintains that there is no evidence that her mental illness has ever posed a threat to E.S. and further points out that at the time of the termination hearings, she was in counseling for her mental illness as required by the MCDCS.

A parent's fitness to care for his or her child is judged at the time of the termination hearing, taking into account evidence of changed conditions. *In re Involuntary Termination of Parent Child Relationship of A.H.*, 832 N.E.2d 563. The trial court may also evaluate a parent's habitual pattern of conduct. *See, e.g.*, *In re D.J.*, 755 N.E.2d 679 (Ind. Ct. App. 2001), *trans. denied*. A trial court need not wait until a child is irreversibly harmed such that the child's physical, mental, and social development are permanently impaired before terminating the parent-child relationship. *Id.*

Katie's argument is simply an invitation for us to reweigh the evidence and judge the credibility of witnesses. Although Katie has had no positive symptoms relating to her mental illness since 2002, she exhibits negative symptoms. The concern expressed by Dr. Laite and counselors who worked with Katie is that, while her mental illness appears to be in remission, her symptoms may return at any time and thus, E.S. would be placed in danger by Katie's hallucinations and delusions, which are hallmarks of her mental illness. Of further concern to those who evaluated and/or worked with Katie was the fact that Katie refuses to believe that she suffers from a mental illness, preferring instead to believe that she has anger issues. Dr. Laite explained that Katie's denial or lack of recognition of her mental illness would make her less likely to seek help if her symptoms should return. These concerns have served as the basis for the MCDFC's requirement that Katie submit to ongoing counseling for her mental illness.

Notwithstanding the MCDCS's stated concern about Katie's mental health, throughout the proceedings relating to E.S., Katie has not cooperated with those assigned to assist her with reunification with E.S. and has not complied with the requirement that she attend counseling for her mental illness. Katie's refusal to seek help for her mental illness during the CHINS proceedings regarding Z.S. ultimately led to the initiation of termination proceedings regarding Katie's oldest child. In the instant case, Katie started counseling sessions a few weeks prior to the first fact-finding hearing on the termination petition, admitting that she started counseling for the sole purpose of the termination hearing and that she would not continue if not required by the MCDCS. Of the eleven scheduled sessions, Katie attended seven. Katie's later statement to the court at the last fact-finding hearing in December that she will continue with counseling is overshadowed by her past refusal and non-compliance with counseling-related services and her continued denial that she suffers from a mental illness.

In addition to not complying with orders that she complete mental health counseling, Katie did not complete court-ordered, home-based counseling. Moreover, instead of participating in services upon the MCDCS's involvement with E.S., Katie failed to turn E.S. over as ordered by the court and essentially disappeared with E.S. for a period of six months, all the while failing to comply with ordered services, including mental health services, until she was located and E.S. was removed from her care. Katie's pattern of unwillingness to deal with her mental health issues and to cooperate

with those providing social services, support the court's determination that there is no reasonable probability the conditions which resulted in E.S.'s removal will change.[5]

2.

Katie also argues that the evidence is insufficient to show that termination of the parent-child relationship is in E.S.'s best interest. Katie directs us to testimony provided by one of the caseworkers that Katie has a bond with E.S.[6] Again, however, Katie is requesting this court to reweigh the evidence and judge the credibility of witnesses.

In addition to expressing concern for E.S. in light of Katie's "severe" history of mental illness, the MCDCS presented evidence demonstrating its concern for E.S. given Katie's lifestyle and risky behaviors. Specifically, the MCDCS presented evidence of, and the court found detrimental to E.S., Katie's frequent moves, her series of arrests, her failure to keep appointments with service providers, and her failure to cooperate with service providers.

Further, as noted by several social workers, the best interests of E.S., who has been in a foster home for nearly a year and a half, are served by providing him with a permanent home in a timely manner. *See Baker v. Marion County Office of Family &*

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[5] Katie also argues that the evidence is insufficient to establish that the continuation of the parent-child relationship poses a threat to the well-being of E.S. Because the statute is written in the disjunctive (*see* I.C. § 31-35-2-4(b)(2)(B)(i) *or* (ii)) and given our conclusion that the MCDFC established that there is a reasonable probability the conditions that resulted in E.S.'s removal will not be remedied, we need not address Katie's alternative argument.

Nevertheless, we note the record reveals that Katie has been diagnosed with paranoid schizophrenia and that her history of mental illness was described as "severe." *Transcript* at 251. Although Katie's symptoms are currently in remission, Katie continues to exhibit negative symptoms associated with her mental illness. As explained by Dr. Laite, positive symptoms of Katie's mental illness could return at any time, thus placing E.S. at risk. This same concern was expressed by others providing social services to Katie.

[6] Notwithstanding her recognition of the bond between Katie and E.S., this same caseworker recommended termination of Katie's parental rights based upon E.S.'s need for permanency.

Children, 810 N.E.2d 1035 (Ind. 2004). Children should not be made to wait indefinitely for permanency and stability. *Id*. Our Supreme Court has recognized the harm to children caused by lack of permanency and affirmed that it is in the best interest of children to limit the potential years of instability. *Id*.

In light of the evidence and E.S.'s need for permanency, we cannot say the court's conclusion that termination was in the best interests of E.S. was clearly erroneous.

Judgment affirmed.

SHARPNACK, J., and RILEY, J., concur.